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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,339	07/17/2003	Chun-Jen Liao	LIAO3057/EM	8664

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EXAMINER

KETTER, JAMES S

ART UNIT PAPER NUMBER

1636

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,339

Applicant(s)

LIAO ET AL.

Examiner

James S. Ketter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-19 is/are rejected.
- 7) ☒ Claim(s) 10 and 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Claim 10 is objected to because of the following informalities: "which" should follow "carrier" in the first line. Appropriate correction is required.

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10, 11, 13, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Strom et al. (A, newly cited).

The instant claims are drawn to a multi-layer porous carrier, comprising a hollow cavity surrounded by a wall of porous substrate, and a porous structure located under the hollow cavity which provides for cell attachment. Claim 11 further recites that tissue blocks of 500 to 1000 microns may be contained therein. Claim 13 recites that the porous carrier is made of a bioabsorbable polymer material. Claim 15 recites that the bioabsorbable polymer material is a composite material of said polymer and other materials. Claim 16 recites that said other materials are, among others, collagen and poly(ethylene glycol) ("PEG").

Strom et al. teaches, e.g., at the Abstract, and at Figure 6, a multiplayer ingrowth matrix. Figure 6 shows the inner cavity labeled 28, which is formed by a layer of PEG, as set forth in paragraph [0022]. Paragraph [0023] also teaches that other layers may be of, among others, collagen.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 and 13-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 2, and therefore claims 3-9 and 17-19 which depend from claim 1, are written such that claim 1 is incomplete, the numeral "2." For claim 2 is placed before what was apparently intended to be the remainder of claim 1, and what apparently is meant to be claim 2 starts without break thereafter. As such, neither claim 1 nor 2 is properly set forth.

Claims 5, 7, 9 and 14-16 recite "can be", which, in the instant contexts, makes unclear whether that which follows "can be" is actually part of the claim. In each instance, "are" should be substituted.

Regarding claims 6 and 13, and therefore 7 and 14-16 which depend therefrom, the term "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

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Claim 8, and therefor claim 9 which depends therefrom, recites “combining”. However, it is not clear whether this term encompasses chemical bonding, layering of materials one upon the other, or simple mixing. As such, the metes and bounds of the instant claims are not clear.

Claim 15, and therefore claim 16 which depends therefrom, recites “...polymer material can be composite materials...” However, the use of the plural “materials” is confusing as the “polymer material” which it is identified as being is recited in the singular.

Regarding claim 19, the term “including” renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Any inquiry concerning this communication or earlier communications from the Examiner with respect to the examination on the merits should be directed to James Ketter whose telephone number is (571) 272-0770. The Examiner normally can be reached on M-F (9:00-6:30), with alternate Fridays off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner’s supervisor, Remy Yucel, can be reached at (571) 272-0781.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

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For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Jsk
September 2, 2004



JAMES KETTER
PRIMARY EXAMINER